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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,684	01/10/2002	Eric M. Nelson	P-LX 4948	2349

23601 7590 05/17/2004  
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EXAMINER

DAVIS, DEBORAH A

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/914,684	<b>Applicant(s)</b> NELSON ET AL.	
	<b>Examiner</b> Deborah A Davis	<b>Art Unit</b> 1641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's Request for Continued Examination (RCE) filed April 19, 2004 has been acknowledged. Currently, claims 1-7 are pending and under consideration. Independent claims 1 and 4 have been amended.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson et al (USP#6,024,919).

Nelson et al anticipates the instant claims by teaching a method and apparatus for controlling the absorption of a liquid sample. Nelson et al provides

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a method and apparatus of manufacture for receiving a liquid sample, such as blood and other body fluids (column 2, lines 47-50) where a first portion of the polymer layer overlies a solid surface and a second portion of the polymer layer overlies a window (see abstract). Sonic treatment of the polymer layer will selectively reduce the void volume of a sintered polymer layer such as a porous high-density polyethylene (see abstract). The apparatus contains a reaction layer comprising reagents that can react with specific analytes in a liquid sample (column 2, lines 61-62). The apparatus has an air gap (column 6, lines 45-49) comprising a space or hole between two separate solids (see Figure 2, 4b) and a reflectance monitor (translucent window) for view color reactions and changes in the reaction layer (column 9, lines 58-65). The apparatus also comprise of at least one sidewall and wherein the layers, walls and window define an air gap (see abstract and Figure 2). Nelson et al teaches an absorbent polymer of BIODYNE A 0.65  $\mu\text{m}$  (col. 12, lines 12-13) that is permeable to gases and liquid (col. 3, lines 36-40). With respect to the limitation "such that the air pressure of the air gap is increased, thereby controlling liquid sample absorption by the absorbent layer" it is the Examiner's position that since the Nelson et al reference teaches the same type of absorbent layers taught in applicant's specification (BIODYNE), it is inherent that the air gap will increase when liquid is applied.

### ***Response to Arguments***

2. Applicant's arguments filed April 19, 2004 have been fully considered but they are not persuasive:

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3. Applicant argue that Nelson describes a reflectance monitor 5 that is positioned under a window 4b, is spaced apart from 4b and does not serve to define window 4b as a chamber.

This argument is not found persuasive because the translucent window is positioned under the air gap, is defined as a chamber, to detect color reactions (column 9, lines 58-65).

4. Applicant asserts that the previous Office Action describes how the "window" can comprise a space between two solids and there is no teaching or description of this teaching.

This argument is not found persuasive because this teaching can be found in column 6, lines 45-49, where it recites: "the window can be a hole, a recess, a discontinuity or a space (air gap) between two separate solids".

### ***Conclusion***

4. As for reasons aforementioned above, no claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A Davis whose telephone number is (571) 272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax

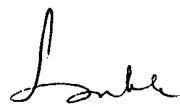
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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Deborah A. Davis  
Remsen Bldg. 3D58  
May 13, 2004



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05/14/04